

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOHN GOSSETT	§	
v.	§	CIVIL ACTION NO. 6:15cv726
OFFICER WILSON, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff John Gossett, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Gossett complained that the maintenance department removed a bench in the dayroom, leaving screws exposed through the floor, and he fell over these screws, breaking his arm. He indicated that the bench had been removed almost a year earlier, although he had never noticed the screws protruding from the floor.

The Magistrate Judge issued a Report recommending that the lawsuit be dismissed with prejudice as frivolous and for failure to state a claim upon which relief may be granted because the failure to remain vigilant in maintaining safe prison environments may rise to the level of negligence, but does not by itself amount to deliberate indifference. *West v. Blair*, 254 F.3d 1081, 2001 U.S. App. LEXIS 31046, 2001 WL 563818 (5th Cir, May 15, 2001), *citing Neals v. Norwood*, 59 F.3d 530, 533 (5th Cir. 1995). The Magistrate Judge also concluded that Gossett's failure to train claim lacked merit. There was no ruling on any possible State law claim filed in a State court.

In his objections to the Report, Gossett asks that his lawsuit be dismissed without prejudice. His objections are entitled “Motion objecting Hon. Judge Love dismiss with prejudice for failure state claim [sic] and frivolous - and request that he dismiss without prejudice for lower court.”

The Court has reviewed the pleadings and the Report of the Magistrate Judge and has determined that this Report is correct. Nonetheless, Gossett’s request for voluntary dismissal should be granted. *See Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977) (plaintiff has absolute right to dismiss his complaint under Rule 41(a), Fed. R. Civ. P., prior to the filing of an answer or motion for summary judgment); *Thomas v. Phillips*, 83 F.App’x 661, 2003 U.S. App. LEXIS 25517, 2003 WL 22965565 (5th Cir., December 17, 2003) (citing *Carter*). It is accordingly

ORDERED that the Plaintiff’s request for voluntary dismissal of his lawsuit, contained within his objections (docket no. 19) is **GRANTED**. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** on the request of the Plaintiff. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **1** day of **November, 2016**.



Ron Clark, United States District Judge